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19 **UNITED STATES DISTRICT COURT**
20 **DISTRICT OF NEVADA**

21 ORACLE USA, INC., a Colorado corporation;
and ORACLE INTERNATIONAL
CORPORATION, a California corporation,

22 Plaintiffs,

v.
23 RIMINI STREET, INC., a Nevada corporation,
and SETH RAVIN, an individual,

24 Defendants.

25 Case No. 2:10-cv-0106-LRH-PAL

26 **DEFENDANTS RIMINI STREET, INC.'S**
AND SETH RAVIN'S SUPPLEMENT TO
RULE 50(a) MOTION FOR JUDGMENT
AS A MATTER OF LAW

27 Judge: Hon. Larry R. Hicks

ARGUMENT

Rimini filed a motion for judgment as a matter of law (“Motion”) on September 28, 2015 (Dkt. 838). Oracle opposed on September 30, 2015 (Dkt. 843), and Rimini filed a reply brief on October 1, 2015 (Dkt. 855). The Court has not ruled on the Motion. On October 2, 2015, presentation of the evidence concluded and it is anticipated that the case will be submitted to the jury on Tuesday, October 5, 2015. The evidence presented in the final days of trial further demonstrates that Oracle’s claims fail as a matter of law. For example:

Causation: Oracle cannot establish a specific, non-speculative connection between the alleged infringement, false statements, and hacking claims, on the one hand, and the harm Oracle claims to have suffered, on the other hand.

Additional evidence at trial demonstrated that customers decided not to renew their contracts with Oracle for a variety of reasons that having nothing to do with the accused conduct in this case. *See, e.g.*, 9/28 Tr. 2256:25-2257:9 (could not afford Oracle’s fees); *id.* 2266:11-16 (customer would have dropped Oracle support regardless of whether Rimini existed); 9/29 Tr. 2404:15-2405:22; *id.* 2410:6-21 (customer transitioning to different software); *id.* 2412:2-18 (full support ending); *id.* 2412:19-2413:9 (cost savings); *id.* 2413:10-16 (looking for better service); *id.* 2506:23-2507:18 (self-supported for a year before going to Rimini); *id.* 2519:13-2520:7 (“Oracle support is extremely expensive”); *id.* 2534:1-11 (“being upset” with Oracle “is what caused us to even go look for a third-party support”); 9/30 Tr. 2734:7-14 (“dissatisfied with Oracle”); 10/2 Tr. 2270:21-22 (feeling forced to upgrade); 10/2 Tr. 3115:16-25 (“[b]udget constraints in the midst of the economic recession”); *id.* 3161:18-21 (bankruptcies); *id.* 3164:7-16 (Oracle was “nickel and diming” the customer); *id.* 3165:7-16 (customer “perceived that they were receiving awful customer service and support”). Indeed, as Richard Cummins, Oracle’s Vice President of Sales Support North America, explained, there “are many reasons” that customers cancel their Oracle support. 10/2 Tr. 3117:2-12.

Oracle Senior Vice President Juan Jones stated that “the biggest reason” customers leave Oracle support is “it’s software that they are just simply no longer using,” the second reason is that they “moved to a -- another software competitor’s software or package,” and only third would “they have somehow moved to third-party support.” 10/2 Tr. 3137:13-25. Mr. Jones also recognized that

1 other reasons included “poor service” and “no intention to upgrade.” *Id.* 3138:10-21. And Jason
 2 Taylor, an Oracle Vice President, disagreed that Oracle lost customers “to low-cost competitors for
 3 service [like] Rimini Street” stating that “that is not necessarily the case.” *Id.* 3162:6-17.

4 The evidence also demonstrates the various reasons customers joined Rimini, which also have
 5 nothing to do with the accused conduct in this case. *E.g.*, 9/28 Tr. 2106:25-2107 (geographic specific
 6 updates); *id.* 2114:3-6 (deliver updates more quickly); *id.* 2120:15-2121:11 (client-specific
 7 customized updates); *id.* 2265:15-21 (better service); *id.* 2271:19-2272:19 (Rimini support is “much
 8 superior”); 9/29 Tr. 2375:20-2376:7 (customized support); *id.* 2383:9-23 (personalized service); *id.*
 9 2409:1-15 (ongoing support for older versions); *id.* 2505:18-2506:11 (transitioning software); *id.*
 10 2514:17-2515:4 (not upgrading platforms further).

11 For example, Mr. Baggett explained that Bausch & Lomb decided to leave Oracle support for
 12 reasons having nothing to do with Rimini, including that Oracle did not “have the same … future
 13 vision for the software of PeopleSoft … so it wasn’t a good strategic fit” (10/1 Tr. 2947:12-14),
 14 Bausch & Lomb “didn’t believe [they] were getting the value out of the support dollars [they] were
 15 paying Oracle” (*id.* 2949:3-7), and Oracle had “a very rigid process” that resulted in “just wasting
 16 their time” without “actually moving towards a fix to the problem” (*id.* 2951:24-2952:25). Had
 17 Bausch & Lomb been “getting excellent service from Oracle,” they “would have stayed with Oracle.”
 18 *Id.* 2959:6-8. But, it was “far too much money for far too little benefit.” *Id.* 2964:3-4. As Mr.
 19 Baggett testified: “I can’t imagine a situation where at that point we would have gone back to Oracle.
 20 We tried so many times over the years … it just wasn’t going to work.” *Id.* 2988:25-2989:5; *see id.*
 21 2987:23-2988:3 (noting that Bausch & Lomb would not have gone back to Oracle even if “Rimini
 22 Street was not an option for whatever reason”). And the reason Bausch & Lomb ultimately decided
 23 to contract with Rimini—after having already decided to not renew with Oracle—was because they
 24 “knew … [they] would get talented people who could fix [their] problems.” *Id.* 2979:15-20.

25 Additional evidence at trial also further demonstrated that customers had many other support
 26 options in addition to Rimini, including self-support (9/29 Tr. 2423:23-2425:3); other consulting
 27 firms (*id.* 2425:4-2426:9); and competitor third-party support providers, such as Spinnaker,
 28 NetCustomer, Versytec, LegacyMode, and Abtech (*id.* 2426:10-2431:7).

1 These problems of causation are also directly relevant to Oracle's damages assumptions.
 2 Evidence was presented suggesting that Ms. Dean "didn't isolate her calculation to just the wrongful
 3 acts" but instead was "looking at Rimini Street in its entirety" (9/30 Tr. 2721:16-2722) in assessing
 4 why customers left Oracle; that Ms. Dean failed to control for the recession and financial hardship
 5 many companies were facing around 2008-2009 (*id.* 2753:6-15; *see also* 10/2 Tr. 3161:18-21 (Oracle
 6 executive Jason Taylor noting that during 2009 time frame "bankruptcies had a large impact on the
 7 cancellation rate" for Oracle support contracts)); that there was no "evidence in the record that shows
 8 that a customer left because of the infringement or the interference" across all product lines (*id.* 9/30
 9 Tr. 2806:3-21); and that Ms. Dean's report was fatally flawed because it failed to go "customer by
 10 customer" and assess each customer's reasons for leaving (*id.* 2811:20-25).

11 Finally, the lack of any evidence supporting Oracle's experts' assumptions regarding whether
 12 TomorrowNow and CedarCrestone were infringing undermines Oracle's entire causation and
 13 damages model, and requires judgment for Rimini. As the Court stated on October 6, 2015, there
 14 was not sufficient evidence submitted at trial with respect to either TomorrowNow or CedarCrestone
 15 that would permit a finding that either company was infringing. Because it was Oracle's burden to
 16 establish these companies were infringing (*e.g.*, *Panduit Corp. v. Stahlin Brothers Fibre Works, Inc.*,
 17 575 F.2d 1152, 1156 (6th Cir. 1978)), and because Oracle's entire damages model was premised on
 18 those companies being infringing,¹ the lack of evidence supporting that assumption undermines
 19 Oracle's entire model and warrants judgment.

20 Inducing Breach of Contract: Oracle's induced breach claim is now premised only on a
 21 theory that Rimini wrongfully caused Oracle customers to breach the website terms of use. Dkt. 843
 22 at 11 ("Oracle's inducing breach of contract claim concerns Oracle's terms of use, not software
 23 licenses"). Yet *Oracle presented no evidence that a single customer breached the website terms of*

24
 25 ¹ *E.g.*, 9/24 Tr. 1689:4-13 (Yourdon) ("My general conclusion was that none of the companies ...
 26 represented a viable alternative"); *id.* 1689:21-25 ("I concluded that TomorrowNow was an
 27 infringing provider I came to that conclusion also because I was instructed by counsel"); *id.*
 28 1693:8-10 ("I was instructed by counsel to consider CedarCrestone to be an infringing provider
 and therefore not viable"); 9/25 Tr. 1911:17-21 (Dean) ("Oracle had no acceptable, noninfringing
 competitors").

1 use. At most, Mr. Jones testified that Oracle customers received “a customer support identifier” (or
 2 “CSI”) and that “access with that CSI is ... subject to terms of use on the website.” 10/2 Tr. 3152:13-
 3 15, 3153:7-10. But Oracle did not present any evidence that a single customer breached the website
 4 terms of use when accessing the website with the CSI. In fact, further testimony confirmed the
 5 opposite: Oracle did not believe its customers breached their contracts. 10/2 Tr. 3136:10-14 (Jones)
 6 (“Q. To your knowledge, has Oracle ever informed any of its licensees that that licensee was --
 7 excuse me -- breaching a license solely by getting support from Rimini Street? A. Not that I’m aware
 8 of.”); *id.* 3136:21-25 (“Q. To your knowledge, has Oracle ever communicated to a licensee that it was
 9 breaching the license by going to a third-party support provider? A. Not that I’m aware of.”).

10 Computer Hacking Claims: Additional evidence demonstrated that Oracle’s systems were
 11 never impaired or damaged by Rimini’s use of automated downloading. 9/29 Tr. 2294:21-2295:4
 12 (Klausner) (“average [search] response time” was “very similar or exactly the same” “for the alleged
 13 period of high Rimini activity”); *id.* 2295:20-24 (“The response time that Mr. Hicks found by looking
 14 literally at the log ... was different between Rimini days and non-Rimini days by only one to two and
 15 a half seconds or so for a user”); *id.* 2296:2-11 (no server impairment); *id.* 2301:12-15 (same); *id.*
 16 2335:17-19 (same); *id.* 2306:1-2 (“There was no damage done”). As Mr. Klausner explained:
 17 “There was no damage. I’ve worked in computers for a long time. I’ve worked on hard drive
 18 development. I’ve worked for companies that produce the hardware. I’ve computed. I’ve
 19 programmed for years, and I’ve put together computers myself, hundreds of them over the years.
 20 There’s no impairment here.” *Id.* 2305:6-13; *id.* 2306:14-17 (having to “reboot the system” is
 21 “different than impair,” because “it comes back up and everything is okay”). And even though
 22 Oracle International Corp. asserts computer hacking claims, there is still no evidence that it even has
 23 a computer.

24 Punitive Damages: Additional evidence demonstrated (i) that Rimini operated with a good-
 25 faith and objectively reasonable belief that its conduct was lawful, and (ii) that Rimini did *not* act
 26 with the type of despicable conduct necessary to sustain a punitive damages award. *See* 9/28 Tr.
 27 2147:10-2148:25 (Rimini would have used alternative methods if it had known that its methods
 28 infringed Oracle’s copyrights); 9/29 Tr. 2420:20-2421:3 (CedarCrestone’s practices influenced

1 Rimini's view of the appropriateness of its processes). For example, when asked whether "Rimini's
 2 processes intentionally violated Oracle's intellectual property rights," Mr. Benge responded "No,"
 3 explaining: "[T]he development team was very committed to respecting Oracle's IP rights. We were
 4 very careful to make sure that clients only received updates that they were entitled to. We were very
 5 careful to make sure that they didn't receive something -- an update from Oracle that they didn't
 6 already pay Oracle for." 9/28 Tr. 2149:1-12. When pressed on cross-examination, Mr. Benge
 7 reiterated the same point: "My thought was that we were, again, never giving a client something that
 8 they hadn't already paid Oracle for." *Id.* 2234:1-2; *see id.* 2234:3-2235:3 (same); *id.* 2235:16-24
 9 (same).

10 Copyright Infringement: Rimini's case in chief also confirmed that liability cannot be
 11 imposed for willful copyright infringement, contributory infringement, or vicarious infringement
 12 because of a failure to prove knowledge and causation. Testimony established that Rimini serviced at
 13 least twenty percent of its customers using remote support or "client-hosted environments" (9/28 Tr.
 14 2123:11-17), and that off-site hosting was commonplace even for customers (*id.* 2259:8-22).

15 In addition, Oracle's cross-examinations of Rimini's witnesses provided further corroboration
 16 of Rimini's argument that Oracle is misusing its copyrights. One witness testified that there were
 17 "two experienced, credible players in the third-party support market other than Oracle," namely
 18 "Rimini and TomorrowNow," both of whom Oracle either has, or is trying to, shut down (*id.* 2492:1-
 19 5; *see also* 10/2 Tr. 3096:3-9). Oracle executives also testified that customers had no options to
 20 reduce support fees with Oracle (10/2 Tr. 3111:19-24) and that Oracle doesn't "negotiate the price"
 21 for support (*id.* 3103:12-18; *see also* 3105:15-20). Indeed, one customer observed that maintenance
 22 fees were "higher than they've ever been." 9/29 Tr. 2492:1-3. One Oracle executive, Juan Jones,
 23 even went so far as to assert that Oracle has "the intellectual property to service" the software. *Id.*
 24 3128:24-3129:5. Mr. Jones was also unaware of Oracle ever having granted a license to a third-party
 25 support provider. *Id.* 3135:21-25.

26 Lost Profits and Infringer's Profits: Even assuming such a showing could support Oracle's
 27 damages case under these circumstances (it cannot), Oracle failed to meet its burden of proving that
 28 no non-infringing alternatives existed during the time period at issue in this lawsuit. *IGT v. Alliance*

1 Gaming Corp., 2008 WL 7084605, at *7-8 (D. Nev. Oct. 21, 2008). The evidence demonstrates that
2 customers had several alternatives. 9/29 Tr. 2423:23-2425:3; *id.* 2425:4-2426:9; *id.* 2426:10-2431:7.
3 And Oracle failed to meet its burden of proving that these alternatives were infringing. In addition,
4 the evidence introduced during Rimini's case established that Rimini had no profits to disgorge
5 because its expenses far exceeded its revenue. 9/30 Tr. 2639-2654; *id.* 2654 ("for the time period
6 January of '06 through February of ... 2014 [w]e've had a net loss of 63 million"); *id.* 2656 ("We
7 had a 23-and-a-half-million-dollar loss for those three product lines"); *id.* at 2756-2759. Oracle's
8 experts did not dispute or rebut this evidence.

Evidentiary Rulings: Several evidentiary rulings also support Rimini's alternative motion for a new trial. *See* 9/29 Tr. 2465:11-19; 9/30 Tr. 2599:18-2600:16; *id.* 2587:6-17; *id.* 2595:3-22.

CONCLUSION

For these reasons, and the reasons previously stated in Rimini's Motion (Dkt. 838), the Court should order judgment for Rimini on all of Oracle's claims.

14 || DATED: October 6, 2015

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CERTIFICATE OF SERVICE

I hereby certify that on October 6, 2015, I caused to be electronically filed the foregoing document with the clerk of the court for the U.S. District Court, District of Nevada, using the electronic case filing system. The electronic case filing system sent a "Notice of Electronic Filing" to the attorneys of record who have consented in writing to accept this Notice as service of this document by electronic means.

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